



# Department of Energy

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## DECISION AND ORDER OFFICE OF HEARINGS AND APPEALS

Name of Case: Personnel Security Hearing

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Case Number: VSO-0564

This Decision concerns the eligibility of ~~XXXXXX~~ (hereinafter referred to as "the individual") to maintain an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local DOE Security Office suspended the individual's access authorization pursuant to the provisions of Part 710 after learning that the individual had failed to protect classified information in accordance with established security procedures. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

### I. Background

The individual has continuously held a DOE security clearance for 26 years while employed by several DOE contractors. With a few exceptions, the individual appears to have safeguarded classified information entrusted to him from the beginning of his employment in 1976 until 2001. During a three-week period in 2001, however, the individual received three security infractions for three separate security incidents. All three security incidents occurred when the individual created classified documents on a computer system that was not approved for processing classified information (hereinafter referred to as an "unclassified computer"). In one or two of those three incidents,<sup>1</sup> the individual also electronically disseminated classified information over an unclassified electronic mail (e-mail) system.

Immediately following the third security incident, the individual's employer conducted a search of the individual's office and computer and purportedly discovered some additional classified e-mails on the individual's unclassified computer and many unsecured, unprotected classified documents in the individual's office. Soon thereafter, the DOE suspended the individual's security clearance.

On May 9, 2002, the DOE sent a Notification Letter to the individual in which it described the derogatory information at issue and explained how the information falls within the purview of

<sup>1</sup> As discussed *infra*, there is conflicting evidence in the record whether the individual electronically transmitted classified documents over his unclassified computer on one or two of the occasions at issue.

10 C.F.R. 710.8(g) (Criterion G).<sup>2</sup> The individual filed a Response to the Notification Letter and exercised his right to request an administrative review hearing. On July 1, 2002, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. After obtaining the requisite extensions of time from the OHA Director,<sup>3</sup> I conducted a two-day classified hearing in the case. 10 C.F.R. 710.25(g). At the hearing, 12 witnesses testified, one on behalf of the DOE and 11 on behalf of the individual. The DOE submitted the classified personnel security file into the record, and the individual tendered five exhibits into evidence at the hearing.

## II. Regulatory Standard

### A. The Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden of persuasion on the individual because it is designed to protect national security interests. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting of security clearances indicates "that security determinations should err, if they must, on the side of denials."); *Dorfsman v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of security clearance.)

An administrative review hearing is conducted "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. 710.2(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. 710.27(d). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence to mitigate security concerns.

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<sup>2</sup> Criterion G pertains to derogatory information indicating that a person has "[f]ailed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security, or disclosed classified information to a person unauthorized to receive such information; or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems." 10 C.F.R. 710.8(g).

<sup>3</sup> The hearing in this case was delayed almost six months beyond the regulatory time frame set forth in the Part 710 regulations so that classified information issues could be addressed by cognizant officials in the DOE.

## B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

## III. Findings of Fact

Many of the facts in this case are disputed. In addition, documentary and testimonial evidence in the record strongly suggest that some of the factual underpinning of the allegations contained in the Notification Letter are incorrect. To ensure the accuracy of the record in this case I will note, where appropriate, any material errors contained in Enclosure 2 to the Notification Letter, and also point out some procedural irregularities that are relevant to the issues before me.

The DOE granted the individual a security clearance in 1976. Over the next 10 years, the individual received four security infractions for failing to comply properly with DOE security regulations, procedures, or guidelines. The four security infractions<sup>4</sup> from this time period that are cited in Enclosure 2 to the Notification Letter are the following:

- On July 10, 1978,<sup>5</sup> the individual received a security infraction for leaving classified matter unattended;
- On May 11, 1978, the individual received a security infraction for an open repository;
- On March 27, 1982, the individual received a security infraction for an open repository;
- On January 21, 1986, the individual received a security infraction for an open repository.

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<sup>4</sup> The record does not contain any of the Reports of Security Incident/Infraction that relate to the four security infractions for the period 1978 to 1986. Part II of those reports requires an employee against whom an infraction is issued to explain the circumstances surrounding the incident involved and to sign and date that form. Part II also requires a manager in the employee's chain of command to report what corrective action, including disciplinary action, was taken to prevent a similar incident from occurring in the future. The manager is also required to sign and date the form. Had these reports been included in the record, I could have examined Part II of the forms and compared the individual's current explanation for the circumstances that led to the old security infractions to the contemporaneous explanation that he had provided on Part II.

<sup>5</sup> Section F.1 of Enclosure 2 to the Notification Letter states that this infraction was issued on July 10, 1987. The Personnel Security Specialist testified at the hearing that the date of this infraction should be July 10, 1978. Transcript of Hearing (Tr.) at 58. Information from several routine investigations into the individual's background also confirm that the date of the infraction at issue was July 10, 1978. See Classified File.

In spite of these four security infractions, the DOE continued the individual's security clearance after conducting routine investigations into the individual's background in 1989, 1994, and 1999. See 2001 Case Evaluation For Access Authorization at 1.

Beginning in July 2000, several significant events in the individual's personal life occurred. First, his father died. A few weeks later, the individual's physical health began to deteriorate, and he was diagnosed with diverticulitis and chronic prostatitis. Exhibits (Ex.) C and D. These illnesses so incapacitated the individual that he was unable to work for five months. Ex. D. The individual returned to work on a part-time basis in early November 2000 and resumed his full time schedule a few weeks later. He continued to suffer, however, from severe side effects to medication prescribed to alleviate pain associated with his two unresolved illnesses. The side effects included waves of nausea and difficulty concentrating. Transcript of Personnel Security Interview (PSI Tr.) at 32, 34; Ex. C.

In February 2001, the individual applied for a job as a project manager of a new classified program at a DOE facility. The individual was selected for the position, and began his new job on February 26, 2001. PSI Tr. at 45; Tr. at 93. The new job was extremely demanding and stressful. The individual worked 60 to 80 hours a week and was under constant pressure to produce unclassified work product in his classified area. The individual's immediate manager confirmed at the hearing that the individual did not receive a classification briefing when he started to work in the classified program area. Tr. at 15. The manager admitted that training in classification was not high on his list of priorities because the goal of the program was to work quickly to satisfy the program's customers. *Id.* at 38-39.

By March and April 2001, the individual's physical condition worsened. He began to suffer from headaches, backaches, drowsiness, sleep deprivation, gastrointestinal pain, physical weakness, and fever and chills. Ex. D. Unknown to the individual at the time, he was also suffering from an undiagnosed panic disorder and major depression. Ex. C; Tr. at 163, 172.

One month after assuming his new job, the individual received the first of what would be three security infractions. X X X X X X X individual created what he thought was an unclassified document on his unclassified computer and, after making some editorial changes requested by his supervisor, disseminated the document via unclassified e-mail (hereinafter X X X X X X X security incident will be referred to as "Incident #1"). There is no dispute with regard to Incident #1 that the individual did not obtain a classification review of the subject document by an Authorized Derivative Classifier (ADC) before disseminating the document. Following Incident #1, the individual met with security representatives and he was issued a Report of Security Infraction on April 9, 2001.<sup>6</sup>

<sup>6</sup> The record contains the Report of Security Infraction issued on April 9, 2001 relating to Incident #1. However, Part II of that report was neither completed nor signed by either the individual or his manager. Information from Part II would have been relevant to my findings with regard to the circumstances surrounding



On April 2, 2001, the individual requested that the head of the contractor's classification office (Contractor Classification Official) provide a briefing to him and others from his facility and other DOE facilities on classification issues relating to his new program area. Tr. at 103, 283. The individual and others assembled anticipating that they would receive a briefing from the Contractor Classification Official. *Id.*, Tr. at 244. The Contractor Classification Official failed to show up. *Id.* Undaunted by these events, the individual again requested that the Contractor Classification Official provide a classification briefing for those interested at the DOE facility. *Id.* The Contractor Classification Official allegedly responded that he did not have time to provide the requested briefing. *Id.*

On April 4, 2001, the individual consulted with an ADC (ADC #1) because he needed to prepare an unclassified document in a subject area that was classified.<sup>7</sup> Tr. at 103, 215. The ADC suggested that the individual avoid the use of certain language to ensure that his document was unclassified. *Id.* at 215. The individual followed the ADC's instructions and drafted the document on his unclassified computer. *Id.* Even though the individual believed that he had created an unclassified document because he had consulted with ADC #1 in advance, the individual took the subject document to the Contractor Classification Official for a second review. *Id.* The Contractor Classification Official was not in his office so another ADC (ADC#2) reviewed the document in the Contractor Classification Official's stead. ADC #2 determined that the document at issue contained classified information. Upon learning of ADC #2's determination, ADC #1 expressed his opinion to the Contractor Classification Official that the document in question was unclassified. *Id.* at 237. The Contractor Classification Official overruled ADC #1's opinion and the individual was issued a

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Incident #1 and the commitments, or lack thereof, that the individual made with regard to his future behavior in this area.

<sup>7</sup> My finding in this regard differs from the conclusion reached by the Inquiry Official who investigated the individual's behavior with regard to this second security infraction. The individual has consistently maintained that he sought an ADC opinion on the content of his document before creating it on his unclassified computer. Specifically, he told the Inquiry Official who was appointed to investigate the individual's behavior for possible criminal overtones that he had obtained a classification review of the subject document before providing it to the Contractor Classification Officer for a second review. However, ADC #1 did not admit to the Inquiry Official that he had discussed the specific substantive content of the subject document prior to the individual's drafting of the document. As a consequence, the Inquiry Official did not believe the individual. At the hearing, ADC #1 testified that the Inquiry Official never showed him the document about which he was being questioned. Tr. at 229. ADC #1 further admitted that he thought the Inquiry Official was asking him whether he had seen the final version of the document at issue, not whether he had reviewed any interim drafts or directed the individual to "soften" some language to make the document unclassified. *Id.* ADC#1 also admitted at the hearing that every time the individual put "pen to paper," he went to him and inquired about the document's classification status. *Id.* at 247. ADC #1 further related that the individual went to him many times a day seeking classification advice, and "bugged [him] to death." *Id.*, at 247, 248. During the 2001 PSI, the individual also reiterated that he had spoken to ADC #1 before drafting the document that led to Incident #2. Finally, at the hearing the individual testified convincingly under oath that he had obtained a classification review from ADC #1 before preparing the document.

second security infraction<sup>9</sup> on April 18, 2001 (hereinafter the April 10, 2001 Security Incident will be referred to as Incident #2).<sup>9</sup>

XXXXX individual created a document on his unclassified computer which he thought was unclassified. The document that he drafted was created using two sources: (1) the document that had led to Incident #2 after it had been changed, reviewed and approved for classification purposes by the Contractor Classification Official; and (2) three unclassified titles from an unclassified document. When it was later determined that the document was classified, the individual received his third security infraction (hereinafter this incident will be referred to as Incident #3).<sup>10</sup>

These three security incidents, occurring in such close proximity to one another, prompted the individual's employer to conduct an administrative search of the individual's office and computer to determine whether his office contained any additional unprotected classified matter or if his unclassified computer contained any other classified documents or e-mails. Several hundred pages of suspected classified documents were retrieved from the individual's office. See Final Incident Report at 29. According to the Contractor Classification Official who personally reviewed the subject documents and the e-mail print-out, there were 20-25 documents in the individual's recycle bin without any classification markings. The Contractor Classification Official testified that some of these documents had not been created by the individual and that it was the document's originator who had made the mistake. Tr. at 313. Some of these documents were different drafts of the same

<sup>9</sup> The Report of Security Incident/Infraction relating to Incident #2 is incomplete. Specifically, Part II of that form has not been completed by the individual or his manager. Had Part II of the form been completed, it would have provided relevant contemporaneous evidence relating to the incident in question.

<sup>10</sup> It is clear from the testimonial evidence in the record and from the Report of Security Infraction relating to Incident #2 that the individual did not electronically disseminate the classified information that he created on his unclassified computer. Section B of the Notification Letter states in part that "he failed to obtain the necessary review by an ADC before he disseminated the document on an unclassified system." The term dissemination suggests that the individual distributed the classified document electronically. The testimonial and documentary evidence establishes that there was no dissemination of the subject information. Hence, to the extent the XXXX Notification Letter alleges that the individual violated established DOE rules and procedures by disseminating a classified document over an unclassified computer on April 10, 2001, that allegation is not sustained.

<sup>10</sup> Section C of Enclosure 2 to the Notification Letter states in part that the individual did not disseminate the document that led to his receiving an infraction for his actions XXXXX. There is conflicting evidence in the record on this matter. The Inquiry Official stated in his report that the third incident was discovered by one of the recipients of the individual's e-mail, clearly indicating that there had been an electronic transmission of the classified document via unsecure means. See Final Incident Report at 27. However, at the hearing, the individual testified that the document was an "internal one" and not disseminated outside of his facility. Tr. at 293. Common sense suggests that even if a classified document were transmitted via an unsecure intranet site, that method of transmission is still a security concern because of potential vulnerabilities in any unsecure computer system. Nevertheless, since the DOE did not cite improper electronic transmission as a security concern in Section C of the Notification Letter Enclosure, I will make no finding on this matter. To do so would, in my opinion, prejudice the individual insofar as an affirmative finding on this matter is outside the scope of the allegations in the Notification Letter.

document. See Final Incident Report at 8. With regard to additional classified e-mails on the individual's unclassified computer, the Contractor Classification Official uncovered nine. *Id.* at 312; see also Final Incident Report at 92-101. Of the nine e-mails identified by the Contractor Classification Official as classified, the individual did not originate three.<sup>11</sup>

#### IV Analysis and Findings

I have thoroughly considered the record in this proceeding, including the documentary evidence and the testimony of the 12 witnesses presented at the hearing. In resolving the question of the individual's continued eligibility for access authorization, I have been guided by the applicable factors described in 10 C.F.R. 710.7(c).<sup>12</sup> After due deliberation, I have determined that the individual's access authorization should be restored. I find that such restoration will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. 710.27(a). The specific findings that I make in support of this decision are discussed below.

**A. Security Concerns Associated with the Derogatory Information**

As a starting point of analysis, I find that the DOE properly invoked Criterion G when it suspended the individual's access authorization. As discussed in Section III above, the individual failed to protect classified information properly on at least seven occasions between 1978 and 2001, twice in 1978, once in 1982, once in 1986 and three times in 2001. He also disregarded security and safeguards regulations to a degree which would be inconsistent with national security with regard to each of the seven incidents that led to his receiving the seven security infractions, *i.e.*, when he left a classified document unattended, when he failed to ensure that the safe that housed his classified documents was locked, when he failed to use a classified computer to generate classified documents, and when he failed to use a secure e-mail system to transmit a classified document. Of these security lapses the three that occurred in a three-week period in 2001 are especially grave because of their sheer number and their proximity to one another. The individual's demonstrated lack of vigilance with regard to his security responsibilities furnished a legitimate basis for questioning his trustworthiness, willingness, and ability to safeguard classified information.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. See *Personnel Security Hearing* (Case No. VSO-0244), 26 DOE 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No.

<sup>11</sup> The e-mails are ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ designated on the e-mail printout as classified e-mail numbers 5, 8 and 9.

<sup>12</sup> The factors enumerated in 10 C.F.R. 710.7(c) include the following: the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of his conduct; his age and maturity at the time of the conduct; the voluntariness of his participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for his conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.



VSO-0154), 26 DOE 82,794 (1997), *aff'd*, *Personnel Security Review* (Case No. VSA-0154), 27 DOE 83,008 (1998) (affirmed by OSA, 1998). In this case, the individual has raised several arguments in an attempt to mitigate the DOE's security concerns at issue.

**B. Mitigation**

**1. Security Infractions Issued in 1978, 1982, and 1986**

The individual testified at the hearing that the three infractions he received for an "open repository" involved old safes that did not work properly and are no longer in use. Tr. at 89. He explained that he had locked his safe and turned the dial but was unaware on the first occasion that the locking mechanism on the bottom drawer of the five drawer safe did not engage. *Id.* After that incident, the individual reports that he never placed any documents in the bottom drawer of his safe. Nevertheless, he still received two other security infractions when it was discovered that his bottom safe drawer was unlocked and empty. *Id.* According to the individual, the malfunctioning of bottom safe drawer locks was a common problem at his work site in the late 1970s and 1980s. *Id.* Ultimately, reports the individual, all the safes at the facility where he worked were replaced with new ones when the problem persisted. *Id.*

With regard to the infraction relating to the unattended classified document, the individual testified that it was someone else who left the document on his desk. *Id.* at 90. According to the individual, the person who left the document for the individual's review did not know that the individual would not be returning to his office for the day. The individual reports that he did not consider the incident his fault, but 25 years ago "the system" always attributed blame to the person in whose office the unattended, unsecured classified document was found. *Id.* at 91.

In considering whether these four security infractions are too remote in time to consider, I reflected upon the Personnel Security Specialist's testimony that these four infractions, when viewed in concert with the events in 2001, establish a pattern of mishandling classified information. I also considered that a person's past behavior is relevant to assessing that person's future ability to comply with DOE security rules. Ultimately, it is my common sense judgment that the circumstances surrounding these four security infractions are factors that are entitled to considerable weight in this case. The individual provided candid, compelling and convincing testimony that with regard to the unattended classified document he was not the culpable party. As for the infractions relating to the "open repository," the individual convinced me that defective equipment as much as human error appears to have been the root cause of the security lapses at issue. In addition, I believed the individual's testimony that after he realized the problem with his safe, he tried to minimize any risk to national security by keeping the bottom drawer of the five drawer safe empty. Typically, corroborating evidence is useful in determining the truth of any arguments advanced by an individual. Here, the passage of time made it difficult for the individual to locate witnesses with recollection of the security incidents who might have provided probative testimony. Also, the absence of the Reports of Security Infractions for the incidents in question deprived the individual of potentially corroborating documentary evidence to support his arguments. In the end, I decided



to rely on the individual's statements under oath regarding these four incidents because I found him to be an honest, sincere witness. A final factor that I considered regarding these old security concerns is that the DOE examined these four infractions on three occasions, i.e., in 1989, 1994, and 1999, and determined that no lingering security concerns remained with regard to any of these matters. For all these reasons, I find that the evidence in the record mitigates the security concerns connected with the allegations contained in Section F of Enclosure 2 to the Notification Letter.

2. Security Infraction Issued in connection with Incident #1

Incident #1 involved the individual's creation and dissemination ~~XXXXX~~ of a document that later was determined to be classified. The individual neither used a classified computer to create the document, nor had it reviewed by an ADC prior to disseminating it. Further, the individual electronically transmitted the classified document via unsecure means. It is the individual's contention that at the time he created the document on his unclassified computer, he was certain that the document was unclassified. In addition, the individual claims that he relied on the opinion of his manager whom he deemed to be a subject matter expert in the classified area at issue that the document was unclassified.

a. Manager #1's Testimony

The Director of the classified program (Manager #1) for which the individual served as project manager testified at the hearing about his involvement in the events that led to Incident #1. He asserted that he is familiar enough with classified information to know when to get it reviewed by a classifier. Tr. at 12. Manager #1 recalls editing the letter that generated Incident #1. *Id.* at 18. According to Manager #1, if he had been the author of the document he would not have sent it for a classification review (emphasis added). *Id.* at 27. Moreover, according to Manager #1, since he was a recipient of the e-mail involved in Incident #1, he was obligated to report any classification concerns about the e-mail had he believed there to be any. *Id.* He did not report any such concerns because he did not believe that the document he had received via unclassified e-mail was classified. *Id.* Manager #1 further related that even if the same document was created today he would not believe that it was classified. Manager #1 concluded that it is not practical to go to an ADC all the time. *Id.* at 43.

Manager #1 testified that the classified program he directed was a new one, and that the DOE customer at another site wanted information relayed in an unclassified format only. *Id.* at 35. Manager #1 also testified that the DOE customer required deliverables on an aggressive schedule, adding to the high pressure environment in which the individual was working. *Id.* at 38-42. According to Manager #1, he no longer allows his customers to demand unclassified deliverables from his classified program. *Id.* at 35-36.

b. The DOE Manager's Testimony

The DOE Manager who was the customer who requested the document that led to Incident #1,

confirmed that he put pressure on the individual to tender only unclassified documents on the classified project. *Id.* at 71. It was the DOE Manager's expectation that the individual would know from his own subject matter expertise and by going to an ADC what was classified and unclassified. *Id.* at 84. The DOE Manager, who has always worked at a different site from the one where the individual works, testified that there are differences of opinion at different DOE sites about what is and is not classified. *Id.* at 70-80. He related that the individual continually expressed concern to him about classification issues relating to his classified program. *Id.* at 72.

c. The Line-Manager's Testimony

The individual's line-manager at the time all three incidents occurred testified that he had worked in a classified setting for 35 years before retiring. Tr. At 352. He related that he was never informed when Incident #1 occurred. *Id.* at 364-365. He testified that standard procedure was not followed. *Id.* at 364-365. The typical way of handling security infractions, according to the line-manager, is as follows. First, the supervisor is notified of the Security Incident/Infraction. Then, the supervisor talks to the employee. If the supervisor believes that the infraction is unwarranted, the supervisor talks to the classification office. *Id.* at 366. If it is clear that the infraction is warranted, the supervisor sits down and develops a plan to ensure that the situation does not recur. The line-manager lamented that he did not have a chance to intervene after Incident #1.

d. The Individual's Testimony and Other Statements

The individual explained that he thought that the document at issue was "100% unclassified" and, for that reason, created it on his unclassified computer and did not seek an ADC review. Response to Notification Letter at 1. He added that after Manager #1 asked him to include a statement in his document, he asked Manager #1 if there would be any classification concern with the addition. *Id.* According to the individual, Manager #1 responded negatively. At the hearing, the individual reiterated this version of events and explained that he now realizes he was "working on the edge" when he tried to create what he thought was an unclassified document. *Id.* at 94. He testified that at the time Incident #1 occurred, he had a new line manager, a new program manager who was not very experienced himself, and a new DOE customer. *Id.* In addition, he was "charging ahead on a new and unfamiliar classified project," had an aggressive deadline schedule to meet, and a customer who only wanted unclassified deliverables. *Id.* As for why the individual did not use a classified computer to generate his deliverables, he testified that the CPU on his classified computer did not work. *Id.* at 390.

The individual claims that after Incident #1, he met with security representatives who advised him to create documents on a classified system if he had any doubt as to their classification. Response to Notification Letter at 1. He denies that the security representatives told him to obtain an ADC review before disseminating any operations information or data.

e. Hearing Officer Assessment of Mitigating Evidence Relating to Incident #1

In my opinion, the individual exercised poor judgment in trying to decide for himself what was and was not classified in his new program area. In addition, the individual erred in relying on the classification advice of Manager #1 because the evidence reveals that Manager #1 was not an ADC. Tr. at 22. Since the individual was working in a highly classified area, it seems reasonable to me that he should have had all his documents reviewed by an ADC before creating them on a classified computer or disseminating them. There is testimony in the record, however, that this approach is not practical in the fast-paced environment in which the individual worked. *Id.* at 43, 119. In addition, there is testimony that employees at the DOE site in question who had expertise in a classified subject area exercised their judgment about classification issues in that specific subject area. *Id.* at 12, 84, 215, 257. The contractor's Manual for Classified Matter Protection and Control<sup>13</sup>, a portion of which is in the record, shows that employees who work in a classified area may make knowledge-based decisions on their own whether information is classified before deciding whether to use a classified or unclassified computer. Ex. E at 4. With regard to Incident #1 (and Incidents #2 and 3) the individual was certain, although wrong, that he was not processing classified information on his unclassified computer. Ultimately, one of the crucial issues before me involves an inquiry into the kind of training that enabled employees at the site in question to make the knowledge-based decisions about what is and is not classified. As discussed *infra*, the evidence in this case suggests that the individual lacked the requisite training to discharge his classified matter protection and control responsibilities properly.

3. Security Infraction Issued in connection with Incident #2

The individual's conduct with regard to Incident #2 is disturbing because there is a suggestion that he breached the commitment that he made to security representatives immediately after Incident #1 to discontinue conducting business in the manner that led to the infraction associated with Incident #1. The evidence adduced at the hearing, however, demonstrates that he did discontinue the practices that led to Incident #1. He did not rely on Manager #1, a subject matter expert in the program area in which the individual worked, to provide a classification opinion. Rather, he consulted with ADC#1 before sitting down at his unclassified computer to draft a document that he wanted to ensure was unclassified. He did not, however, take the document that he created to ADC

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<sup>13</sup> Despite repeated requests from the DOE Counsel and the local DOE Security Office responsible for this case, the contractor at the DOE facility where the individual worked did not furnish its Manual for Classified Matter Protection and Control (CMPC Manual) for the record. However, Exhibit E refers to a portion of the CMPC Manual in effect at the relevant time period and provides in part as follows: "Matter originated by an individual who is not an ADC must be reviewed by an ADC having the appropriate authority when it is reasonable to expect that the documents or materials contain classified information, or when regulations or other requirements apply..." Ex. E at 5. The CMPC Manual provision is similar to the requirements imposed by the DOE in the two DOE manuals relevant to the time period at issue, i.e., DOE Manual 471.2-1B and DOE Manual 471.2-1C. The operative question under both the contractor manual and the DOE Manual is whether it was reasonable for the individual to expect, or whether the individual had any doubt, that the information he was using to create the document was classified.

#1 and ask him to stamp it as unclassified.<sup>14</sup> Nevertheless, it is clear from the testimony of ADC#1 that ADC#1 would have determined the document to be unclassified had he reviewed a final version of it. As the record indicates, however, the Contractor Classification Official overruled ADC#1's opinion regarding the classification status of the document.<sup>15</sup>

Based on the record before me, I find that the individual did request advice from an ADC before he entered information onto his classified computer. He thought the information that he had generated was unclassified. Had the individual returned to ADC#1 and asked him to render an opinion with regard to the document, it is clear from ADC#1's testimony that his expert opinion<sup>16</sup> would have been that the document was unclassified. It was only because the individual wanted to be absolutely sure of the document's classification status before he transmitted it outside the facility<sup>17</sup> that he sought the opinion of the Contractor Classification Official. In the end, the circumstances surrounding Incident #2 convince me that the individual did not knowingly, willfully, or even negligently enter classified information into an unclassified computer on April 10, 2001. Further, based on my assessment of the individual's credibility and his demeanor at the hearing, I find that he had a good faith belief that he was complying with all the regulations, procedures, or guidelines that he knew about when he entered the information into the unclassified computer on the date in question.

#### 4. Security Infraction Issued in connection with Incident #3

Like Incident #2, Incident #3 is alarming because it suggests that the individual was not serious when he committed to refrain from processing classified information on his unclassified computer. The evidence adduced at the hearing, however, strongly suggests that the individual had a compelling, good faith belief that the product that he generated on his unclassified computer was in fact unclassified. The information that he used to create the document at the heart of Incident #3 came

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<sup>14</sup> Evidence in the record indicates that there is no requirement for a classifier to stamp a document as unclassified unless the requester asks for such a stamp. ADC#1 testified that he always stamps a document as unclassified if he reviews a document and determines it to be unclassified, although he admitted that there is no requirement for him to do that.

<sup>15</sup> Since classification is not an exact science, it is understandable from my perspective that well-informed, trained classification officials might differ about the classification status of any given document. This is particularly true in instances such as this one, where there was no Classification Guide in place at the time for the new classified program area. What surprised me at the hearing was that the individual was unaware that if he had asked ADC#1 to stamp his document as "unclassified" and it was later determined that the classification determination was erroneous, the individual would not have suffered any adverse consequences. When I asked ADC#1 at the hearing why employees at his site do not go to an ADC all the time if they are protected by having a classifier's stamp on the document, ADC#1 responded that there is a lack of training on this matter. Tr. at 224.

<sup>16</sup> ADC#1 has 34 years of subject matter expertise in an area related to the one in which the individual worked. I found him to be extremely candid and open in his testimony. It is clear based on his demeanor that he is extremely dedicated to defending national security and takes his ADC responsibility seriously.

<sup>17</sup> I reiterate my earlier finding that contrary to the inference in the Notification Letter, the individual did not disseminate the document at issue in Incident #2 over an unclassified system.



from two sources. He first took the document that had caused Incident #2 and removed all the information that ADC#2 had deemed to be classified. Tr. at 108. To ensure its classification status, the individual took the sanitized document to the Contractor Classification Official for a final review. Response to Notification Letter at 2; Tr. at 291. The document was found to be unclassified by the Contractor Classification Official. *Id.* To this document, the individual added the names of three projects from an unclassified list. PSI Tr. at 24; Tr. at 334. The addition of the three unclassified project names to the individual's unclassified document caused the new document to be classified for reasons not germane to this Decision. At the hearing, the person who provided the unclassified list from which the individual took the project names testified that "she knows of no caution indicating that one should be careful connecting two unclassified documents." *Id.* The Contractor Classification Official also testified at the hearing that there was no way that the individual would have known that the two unclassified documents at issue, when put together, became a classified document. *Id.* at 307. He added that the only way the individual could have known this would be if he had gone to an ADC or had extra training. *Id.*

After reviewing the totality of the evidence with regard to Incident #3, I find that the individual did not deliberately, willfully, nor negligently abrogate his prior commitments to security officials to refrain from entering certain kinds of information on his unclassified computer. To be sure, a prudent person who had received two infractions in a brief period should have, in my opinion, insisted that an ADC review every document before and after its creation. The individual nevertheless provided convincing testimony that he earnestly believed that he could create an unclassified document from the two unclassified sources in question. As more fully discussed *infra*, I find that the individual's inadequate training prevented him from understanding why and how two unclassified documents, when combined, can become classified. This same lack of understanding and training prevented him from knowing that he should have consulted with an ADC prior to creating the document in question.

#### 5. Other Unprotected Classified Documents and Classified Electronic Mail Messages

With regard to the other documents that the individual's employer found while conducting an administrative search of his office after Incident #3, the individual states that it is difficult for him to respond to this security concern because he was not given the opportunity to review any of the documents. According to the Final Incident Report, approximately 70 unmarked, unsecured classified documents were located in the individual's office. See Final Incident Report at 5. Some of those classified documents were duplicates of one another, or different drafts of the same document. *Id.* The majority of the classified documents were deemed classified for the same reason that the document at issue in Incident #3 was considered classified. *Id.* There were a few other documents, however, that were classified for other reasons. *Id.* It appears from the Final Incident Report that the potential compromise to national security resulting from the individual's failure to protect the subject documents could have been great. *Id.*

According to the individual, now that he understands and appreciates the classification rulings relating to Incidents #1, 2, and 3, he realizes why any unmarked documents found in his office

should have borne a classification marking. Response to Notification Letter at 3. The individual testified at the hearing that he had a classified safe in his office, and had he known the classification status of the documents under his control, he would have protected them by placing them in his safe. Tr. at 121.

As for the classified e-mails that were uncovered on his unclassified computer, the individual states that "I did not knowingly create and distribute classified information via unclassified e-mail . . . I would never do this on purpose and it concerns me that others might think I would." Response to Notification Letter at 3. At the hearing, the individual testified convincingly that "I guarantee you, if I thought it was classified it wouldn't be on my computer." Tr. at 121.<sup>18</sup>

As fully explained in Section 6 below, I find that the individual did not have adequate training to allow him to fulfill properly his responsibilities for handling and protecting classified information, including the information discovered during the search of his office in April 2001.

## 6. Inadequate Training

There is compelling documentary and testimonial evidence in the record that convinces me that the individual was not adequately trained to discharge his responsibilities to protect and control classified material.<sup>19</sup> For all the reasons discussed below, I find that the individual's inadequate training is a significant mitigating factor in this case. See *Appendix B to Subpart A of Part 710-Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968* at 35 (c); *Personnel Security Hearing* (Case No. VSO-0261), 27 DOE 82,810 (1999) (affirmed by OSA 2000).

### a. Testimonial Evidence

#### i. Former Cyber-Security Site Manager's Testimony

The cyber-security site manager at the time of the incidents of concern in this Decision testified that during the time the individual was involved in his security lapses, there were ongoing studies being conducted to discern why employees were involved in so many significant incidents of security concern. The studies were undertaken because the transmission of classified information over

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<sup>18</sup> In evaluating the circumstances surrounding the additional classified e-mails, I also considered the testimony of the cyber-security manager at the time that this incident occurred. The former cyber-security manager testified that there is no way of telling from an e-mail printout whether the individual received an ADC review of the e-mail because the reviews might have been done orally. *Id.* at 146. Since some of these e-mail messages predated the 2001 time frame, I also considered the cyber-security manager's testimony that some of the computer incidents at the site occurred because the classification status of the same document can change from unclassified to classified over a time period. Tr. at 144.

<sup>19</sup> I did examine the individual's training record that is contained in the Final Incident Report. Based on the evidence adduced at the hearing, I conclude that the training the individual received was inadequate.

unclassified computers was a problem at the site before the individual's security incidents occurred. According to the witness, the web-based training given to employees regarding Classified Matter Protection and Control is inadequate. Tr. at 156. He opined that a more effective training approach would be to provide training in a classroom setting where people could ask questions and obtain clarification on issues. *Id.*

ii. Manager #1's Testimony

Manager #1 testified that when the individual assumed his new job with the new classified program, he was not given any classification briefing. *Id.* at 15. He admitted that training in classification was not high on the list of priorities because they were under tremendous pressure to produce work in an expeditious fashion. *Id.* at 38-39. He explained that the individual tried to learn about classification matters on his own. *Id.* at 16. Manager #1 opined that the general training that every employee receives is inadequate to address the classification matters in the classified program that he oversees. *Id.* at 29-34.

iii. DOE Manager's Testimony

The DOE Manager who requested the document that is the subject of Incident #1 testified that the individual "was brought on board with very little training and background about what was going on in the program." *Id.* at 72. The DOE Manager related that at every meeting he had with the individual, the individual expressed concern about classification issues. *Id.* According to the DOE Manager, the individual or someone on his team asked classification personnel to develop a classification guide for the program that he was working on. *Id.* During the time the individual was involved in the program, stated the DOE Manager, no guide was prepared. *Id.* at 73. The DOE Manager admitted at the hearing that the individual was the only one on his team who was unaware that other team members were using a specific classification guide as a substitute for the guide that had yet to be developed in his program area. *Id.* at 78. Finally, the DOE Manager admitted that a "briefing on classification would have helped [the individual] quite a bit." *Id.* at 76.

iv. ADC#1's Testimony

ADC#1 opined at the hearing that there is a lack of training at the site that prevents employees from regularly seeking classification review of their work product. *Id.* at 224. ADC#1 testified that when the individual first began working in his new position in February 2001, the individual came to him seeking to educate himself about the classification intricacies of the program. *Id.* at 215. ADC#1 also confirmed at the hearing that the individual had twice sought, but never received, a classification briefing for himself and other team members from the Contractor Classification Official. *Id.* at 244. ADC#1 also testified that it was very difficult for the individual to work in his new program with little classification guidance. *Id.* at 246. Finally, ADC#1 related that the individual sought ADC#1's advice many times a day on classification issues, sometimes "bugg[ing] [him] to death." *Id.* at 247.

v. Colleague's Testimony

One of the individual's colleagues who is an ADC testified that it is difficult to work in a new program such as the one in which the individual worked because some things that are unclassified in one program may be classified in another. *Id.* at 263. The colleague expressed his opinion that employees who are heavily involved in classified programs should get specific classification training so that they will learn what is and is not classified in their program area. *Id.* at 271.

vi. Contractor Classification Official's Testimony

The Contractor Classification Official oversees 275 ADCs at the DOE facility where the individual works. *Id.* at 295. He testified that the individual often sought his advice and the advice of others in his office on classification matters. *Id.* at 300. He admitted that with regard to Incident #3, there is no way the individual could have known the document that he created was classified unless he went to an ADC or had extra training himself. *Id.* at 307. He stated that he supports educating the workforce on classification issues and that over the last 15 months he has implemented many of the improvements recommended in the two studies set forth as Exhibits A and E. *Id.* at 316-317.

vii. Colleague #2's Testimony

Another colleague of the individual testified that at the time the individual received his three infractions in 2001, it was not uncommon for people to "get tripped up" on these matters. *Id.* at 346. She added that the classification directives have changed in the last six months so it is now less common for employees to get these e-mail-related infractions. *Id.* Colleague #2 provided her own story of problems that can result from obtaining an oral opinion regarding classification matters from an ADC. One day she obtained a classification opinion from an ADC that what she had hand-written was unclassified. *Id.* at 345. She typed and issued the document. *Id.* Another ADC saw the document and stated that it was classified. Colleague #2 described her anxiety as she awaited a final decision from the classification office at the site. Luckily, stated Colleague #2, the final ruling was unclassified. *Id.*

b. Documentary Evidence

The individual's employer conducted two studies in 2001 and 2002 to evaluate the reasons for what is described as a noticeable increase in computer security-related incidents at the site where the individual worked. Ex. A and E. Each of the studies provides probative evidence supporting a finding that the individual would have been more capable of protecting potentially classified material had he received additional training.

According to the first study, there were scores of computer-related incidents that occurred in 2001 that involved the transmittal of documents where the originator failed to seek adequate classification review. Ex. A. The first study concluded that the implementation of specific kinds of training for the site population would likely cause a decrease in these kinds of security-related incidents. *Id.* at



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A second study attributed the root causes of the computer security-related incidents to poor training and poor communication with regard to the employees' security responsibilities. Ex. E. The second study pointed out that "knowledge-based decisions are required by an employee relative to whether the information should be entered on a classified or an unclassified system (i.e. the employee must make the decision if there is the potential for classified information)" *Id.*

### c. Summary

The general and specific evidence in the record convinces me that the individual was inadequately trained in the area of classified matter protection and control. On a general level, the two studies commissioned by the contractor in 2001 provide independent corroboration that poor training at the site in question may have affected the individual's ability to discharge his security responsibilities properly. In addition, ADC#1 opined that many employees did not go to ADCs regularly because they were not informed that they would be protected from adverse actions if they were to obtain a written classification determination that later proved faulty.

On a specific level, Manager #1 readily admitted that the individual was ill-equipped to deal with the classification issues in his new job and that classification training was secondary to production. The DOE Manager confirmed that the individual frequently expressed concern about classification issues in the new program area. ADC #1 testified that the individual consulted him many times a day seeking classification advice to the point that he "bugged him to death." The Contractor Classification Official acknowledged that the individual frequently consulted him or his office for advice. In addition, numerous witnesses confirm that the individual twice asked for a special classification briefing but did not get one. There is also evidence that the individual tried to educate himself in the absence of training by requesting assistance from managers in programs similar to the new one that he headed.

### 7. Physical and Mental Health Issues

There is probative evidence in the record suggesting that the individual's precarious physical and mental health may have contributed to the security lapses that occurred in a three-week period in 2001.

In July 2000, the individual was diagnosed with diverticulitis and chronic prostatitis. Ex. C and D. These illnesses completely incapacitated him for five months, rendering him unable to work. *Id.* The

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<sup>20</sup> A team analyzed the computer-related incidents in the study and recommended several areas of improvement to reduce these security-related incidents, including the following: (1) creation of a general plant population awareness training video to discuss the document review process; (2) development and distribution of a wallet size card to display on or near computers with key words to avoid using when creating unclassified documents and e-mails; and (3) moving the current web-based training for Control of Classified Matter and Protected Information to a classroom environment with a detailed test for certification.

individual returned to work in early November 2000 on a part-time basis, and resumed his full time schedule by late November 2000. He continued to suffer from side effects associated with the medication prescribed to redress his unresolved illnesses as late as February 2001 when he assumed his new position. The individual's line-manager testified that he did not believe that the individual's health was good enough in February 2001 to handle the demands of the new, high pressure job that he had assumed. Tr. at 372.

The record reflects that between March and April 2001, the individual's physical condition worsened. He began to suffer from headaches, backaches, drowsiness, sleep deprivation, gastrointestinal pain, physical weakness, and fever and chills. Ex. D. Finally, in April 2001, the individual was diagnosed by both a psychologist and psychiatrist as suffering from major depression and a panic disorder. Ex. C and D.

At the hearing, a staff psychologist (Psychologist) for the contractor at the DOE facility where the individual works provided clear, succinct, and convincing testimony regarding the individual's mental and physical health during the period in question. The Psychologist testified that when he first examined the individual in April 2001, it was his clinical impression that the individual was severely depressed. Tr. at 164. He immediately referred the individual to a psychiatrist who concurred with the psychologist's diagnosis. See Ex. C. According to the Psychologist, the hours and stress associated with the individual's new job, compounded by his unresolved physical illnesses, and the death of both his parents "tripped over into clinical depression." *Id.* at 175. The Psychologist testified that the individual also suffered from a panic disorder and that he witnessed one of the individual's panic attacks during an office visit.<sup>21</sup> *Id.* at 172. The Psychologist opined that the individual's symptoms worsened in May 2001, even though his primary physician had prescribed Prozac for the individual. According to the Psychologist, the individual's depression went into remission by July 2001 after his Prozac dosage had been increased and he had undergone counseling. *Id.* at 179. According to the record, the individual remained in counseling until March 2003.

After carefully considering the evidence recounted above, it is my determination that the individual's fragile mental and physical health during the period in question are relevant and material factors with regard to mitigation in this case.<sup>22</sup> The medical information in the record suggests that the individual

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<sup>21</sup> At the hearing, the Psychologist described the panic attack that he witnessed as follows: the individual began sweating profusely, became short of breath and started to hyperventilate, and expressed racing thoughts, a fear of dying and an overall sense that he was falling apart. *Id.*

<sup>22</sup> The Psychologist provided perhaps the clearest, most concise testimony of any mental health expert that I have heard since I began serving as a Hearing Officer in cases arising under 10 C.F.R. Part 710 in 1994. In deciding whether to stay this proceeding and request that the local security office evaluate possible derogatory information under 10 C.F.R. 710.5(h), I considered that the Psychologist does fitness-for-duty evaluations at a DOE facility and specifically considers whether there is evidence of any mental impairment. The Psychologist's familiarity with the DOE standards and his compelling testimony that the individual's mental illness has been in remission since July 2001 convinced me not to refer a potential Criterion H concern to the local DOE security

was not psychologically or physically strong enough in 2001 to handle the pressures of his job, or to fulfill his security responsibilities with regard to the safeguarding of classified information.

#### 8. Other Factors

As I reflected on the evidence in this case, I also considered whether the negative implications associated with the individual's recent involvement in security incidents can be mitigated by a showing of reformation or rehabilitation. Rehabilitation depends on recognition and acknowledgment of wrongdoing, coupled with demonstrated conduct over a period of time that a person is willing to comply with security regulations. In this case, the individual has acknowledged the errors associated with his security lapses. He has also demonstrated a willingness to comply with security regulations over the last two years. For example, his current supervisor testified that even though the individual now works in an unclassified environment, he is extremely vigilant in making sure everything is done correctly from a classification standpoint. *Id.* at 186. He makes sure that all the documents being prepared in his new organization are reviewed by an ADC. *Id.* He is "very conscientious about his security responsibilities and seeks out direction from others when he does not know the rules." *Id.* at 187, 189. The supervisor also testified that she ensures that her employees receive additional training depending on the nature of their projects. *Id.* at 191.

Moreover, during the two days of hearing, I observed the individual and found him to be an earnest person who cares about his job and complying with the rules imposed on his conduct. His concluding testimony that he now "fears" handling classified information after this experience is valuable insight on his part into the enormous responsibility that one must assume if one takes a job involving classified information.

#### C. Summary

All the incidents at issue in this case are extremely serious and constitute basic breaches of security practices. These incidents, like all involving the proper failure to handle classified information, can have serious, direct consequences to national security. In this case, the individual's multiple security transgressions, occurring in a short time period, increased the risk for potential compromise of classified information.

Notwithstanding the compelling security concerns in this case, the individual has provided convincing evidence that, when assessed cumulatively, mitigates those security concerns. Regarding the four security infractions that the individual received between 17 and 25 years ago, I found that the convincing testimony about the circumstances surrounding those four incidents mitigated the concerns at issue. Moreover, the DOE's decision on three occasions, in 1989, 1994 and 1999, that there were not lingering security concerns associated with those incidents also supports a finding of mitigation.

As for Incidents #1, 2, and 3, the documentary and testimonial evidence strongly supports a finding that a confluence of factors contributed to these three serious security incidents. The documentary evidence shows that poor training at the individual's work site led to a noticeable increase in computer related-security incidents during the period in question. The testimonial evidence shows that (1) the training in classification was not a priority in the individual's work group; (2) the individual was the only one in his work group that was unaware others were using a substitute classification guide pending the creation of a specific guide for his project; (3) the individual diligently but unsuccessfully tried to obtain specific classification training so that he could execute his security responsibilities properly; (4) the individual received very little training in the highly classified project when he was hired; (5) the general training that the individual received was inadequate for him to understand the classification intricacies of his program area; (6) the individual was required to produce only unclassified work product from a classified area; and (7) the individual worked long hours in a fast-paced environment with an aggressive time table for producing work product.

In addition, the compelling testimony of the Psychologist, combined with the medical documentation in the record, convinced me also that the individual's fragile mental and physical health played a significant role in the individual's actions that led to Incidents #1, 2, and 3. Since these matters are now resolved, there no longer appears to be a concern that the individual is not mentally or physically able to safeguard classified matter in an appropriate manner.

As for the documents and e-mails discovered during the course of the search of the individual's office, I believed the individual that he would never have failed to lock the classified documents in his safe had he known that they were classified, or generated classified e-mails on an unclassified computer had he known that the information was classified. Since the documents at issue were neither catalogued nor presented into evidence, it is impossible to know how many of them are duplicates of one another or different drafts of the same document. See Classified File. As for the additional e-mails, the Contractor Classification Official testified at the hearing that his handwriting was on the e-mail printout and that the individual was the recipient of some of the classified e-mails. With regard to the other e-mails, the former cyber-security manager suggested that it is impossible to tell from a printout whether an employee got an oral classification opinion from an ADC before drafting the e-mail. He also admitted that the site experienced problems with computer security-related incidents because some information that was previously unclassified became classified at a later date. In the end, it is my determination that adequate classification training is imperative for any employee working in a classified environment and that the individual did not receive the training necessary that allowed him to know that he had either generated or had in his possession classified documents.

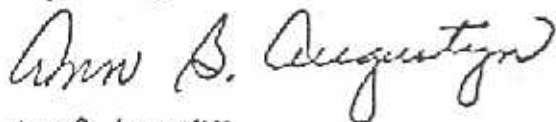
In the end, I must make a predictive assessment whether the individual might endanger the common defense and be a risk to national security if his security clearance is restored. There are several reasons why I believe that the individual has the desire and ability, and can be trusted in the future, to safeguard classified information. First, the environment at the DOE site where the individual works appears to have changed since March 2001. The Contractor Classification Official testified



at the hearing that he has implemented many of the suggestions contained in the two studies that appear as Exhibits A and E. The Contractor Classification Official also testified that he strongly supports educating the workforce regarding classification issues. Second, the individual's new supervisor stated that she personally ensures that her employees receive the training they need to do their job. She further attested to the individual's vigilance over the last two years in making sure everything is done correctly from a classification standpoint. Third, Manager #1 testified that he no longer allows his customers to demand that they receive only unclassified information in his classified program. Fourth, the individual's physical and mental health issues that affected his ability to handle classified information in an appropriate manner have been resolved. Finally, my personal observation is that the individual has learned a great deal about protecting classified information and the potential damage to national security for failing to do so through the ordeal of this process. He now understands in a way that he previously did not that there is an enormous responsibility and burden placed on all holders of security clearances to ensure that any potential classified matter is appropriately protected, stored, and secured. Despite the individual's past behavior, I believe that the risk of recurrence of these security lapses is low. For this reason, I find that the individual's security clearance should be restored.

#### V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE to raise serious security concerns under Criterion G as to whether the individual's suspended access authorization should be restored. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has brought forth sufficient information to mitigate these security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. Review of this Decision by an Appeal Panel may be sought under the regulations set forth at 10 C.F.R. 710.28.



Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: DEC 09 2003